



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2014-0342; FRL-9925-16-Region 3]

Approval and Promulgation of Implementation Plans; Pennsylvania; Pennsylvania Regional Haze State Implementation Plan Revision: Sulfur Dioxide and Nitrogen Oxide Best Available Retrofit Technology Limits for the Cheswick Power Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing a limited approval and limited disapproval of a revision to the Pennsylvania State Implementation Plan (SIP) submitted by the Commonwealth of Pennsylvania through the Pennsylvania Department of Environmental Protection (PADEP). This SIP revision addresses the sulfur dioxide (SO₂) and nitrogen oxide (NO_x) Best Available Retrofit Technology (BART) requirements for Boiler Number 1 of the Cheswick Generating Station (Cheswick) in Allegheny County. EPA is finalizing a limited approval of the SIP revision for Cheswick's SO₂ and NO_x BART requirements on the basis that the revision corrects an error in the SIP and strengthens the Pennsylvania SIP, while EPA is also finalizing a limited disapproval of this part of the SIP revision because the SIP revision relies on the Clean Air Interstate Rule (CAIR) and not the Cross-State Air Pollution Rule (CSAPR) which has replaced CAIR. This final action is in accordance with the requirements of the Clean Air Act (CAA) and EPA's rules for BART.

DATES: This final rule is effective on **[insert date 30 days after publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2014-0342. All documents in the docket are listed in the www.regulations.gov website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Irene Shandruk, (215) 814-2166, or by e-mail at shandruk.irene@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particles (*e.g.*, sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and their precursors (*e.g.*, SO₂, NO_x, and in some cases, ammonia (NH₃) and volatile organic compounds (VOC)). Fine particle precursors react in the atmosphere to form fine particulate matter (PM_{2.5}), which impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. Section 169A of the CAA establishes as a national goal the

"prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution" and requires SIPs for states whose emissions may reasonably be anticipated to cause or contribute to visibility impairment in Class I areas to contain emission limits, compliance schedules and other measures as may be necessary to make reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas.¹ A regional haze SIP generally must include, among other measures, source-specific BART emission limits for each source subject to BART. A detailed discussion of the requirements of the regional haze program can be found in our earlier notice proposing action on Pennsylvania's regional haze SIP. *See* 77 FR 3984 (January 26, 2012).

Rather than requiring source-specific BART controls, states also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART. 40 CFR 51.308(e)(2). EPA made such a demonstration for the CAIR.² 70 FR 39104 (July 6, 2005). EPA's regulations provided that states participating in the CAIR cap and trade program under 40 CFR part 96 pursuant to an EPA-approved CAIR SIP or which remain subject to the CAIR Federal Implementation Plan (FIP) in 40 CFR part 97, do not require affected BART eligible electric generating units (EGUs) to install, operate, and maintain BART for emissions of SO₂ and NO_x. *See* 40 CFR 51.308(e)(4). EPA subsequently determined that the trading programs in CSAPR,

¹ EPA's regulations implementing CAA section 169A are located at 40 CFR 51.308 and require states to establish long-term strategies for making reasonable progress toward meeting the national goal in CAA section 169A.

² CAIR required certain states like Pennsylvania to reduce emissions of SO₂ and NO_x that significantly contribute to downwind nonattainment of the 1997 NAAQS for PM_{2.5} and ozone. *See* 70 FR 25162 (May 12, 2005). CAIR was later found to be inconsistent with the requirements of the CAA and the rule was remanded to EPA. *See North Carolina v. EPA*, 550 F.3d 1176 (D.C. Cir. 2008). The court left CAIR in place until replaced by EPA with a rule consistent with its opinion. *Id.*

which was promulgated to replace CAIR, would achieve greater reasonable progress towards the national goal than would BART and could also serve as an alternative to source-by-source BART. *See* 77 FR 33641 (June 7, 2012).³

On December 20, 2010, PADEP submitted revisions to the Pennsylvania SIP to address regional haze as required by the CAA and 40 CFR 51.308. At the time of the development and submission of Pennsylvania's December 20, 2010 regional haze SIP submission, EPA had not yet promulgated CSAPR to replace CAIR. On July 13, 2012, EPA finalized a limited approval of the Pennsylvania regional haze SIP. 77 FR 41279. Our approval was limited due to Pennsylvania's reliance upon CAIR for certain regional haze requirements including BART for EGUs. On June 7, 2012, EPA had also finalized the limited disapproval of Pennsylvania's regional haze SIP (and other states' regional haze SIPs that relied similarly on CAIR) due to its reliance on CAIR as EPA had issued the CSAPR to replace CAIR at that time. 77 FR 33641. On June 7, 2012, EPA also finalized a limited FIP for Pennsylvania and other states, which merely substituted reliance on EPA's more recent CSAPR NO_x and SO₂ trading programs for EGUs for the SIP's reliance on CAIR.⁴ *See* 77 FR 33641.

³ CSAPR was proposed by EPA to replace CAIR and to help states reduce air pollution and attain CAA standards. *See* 75 FR 45210 (August 2, 2010) (proposal) and 76 FR 48208 (August 8, 2011) (final rule). The United States Court of Appeals for the D.C. Circuit (D.C. Circuit) issued a decision in *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012), vacating CSAPR and keeping CAIR in place pending the promulgation of a valid replacement rule. Subsequently, on April 29, 2014, the United States Supreme Court reversed the August 21, 2012 opinion of the D. C. Circuit which had vacated CSAPR and remanded the matter to the D.C. Circuit for further proceedings. *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014). After the Supreme Court's decision, EPA filed a motion to lift the stay of CSAPR and asked the D.C. Circuit to toll CSAPR's compliance deadlines by three years, so that the Phase 1 emissions budgets apply in 2015 and 2016 (instead of 2012 and 2013), and the Phase 2 emissions budgets apply in 2017 and beyond (instead of 2014 and beyond). On October 23, 2014, the D.C. Circuit granted EPA's motion and lifted the stay on CSAPR. *EME Homer City Generation, L.P. v. EPA*, No. 11-1302 (D.C. Cir. Oct. 23, 2014), Order at 3. EPA views the D.C. Circuit's October 23, 2014 Order as also granting EPA's request to toll CSAPR's compliance deadlines. EPA commenced implementation of CSAPR on January 1, 2015. 79 FR 71663 (Dec. 3, 2014) (interim final rule revising CSAPR compliance deadlines).

⁴ In response to a petition for review of EPA's limited approval of the Pennsylvania regional haze SIP in the United States Court of Appeals for the Third Circuit, EPA successfully moved for a voluntary remand without vacatur. On

For the December 20, 2010 regional haze SIP, the Allegheny County Health Department (ACHD) had performed a BART analysis for Cheswick, a Pennsylvania EGU. In the May 4, 2009 Cheswick BART review memo, ACHD stated it performed its BART analysis in accordance with 40 CFR 51.308(e) and 40 CFR part 51, appendix Y, Guidelines for BART Determinations Under the Regional Haze Rule (BART Guidelines).⁵ The May 4, 2009 Cheswick BART review memo was included in Pennsylvania's December 20, 2010 regional haze SIP (in Appendix J) and specifically stated that SO₂ and NO_x limits were not considered in the memo since the source was participating in CAIR. The May 4, 2009 BART Review Memo for Cheswick and the December 20, 2010 regional haze SIP submission also contained an error concerning the recommended particulate matter (PM) BART for Cheswick.

The December 20, 2010 regional haze SIP submission explicitly provided that BART for Pennsylvania EGUs was participation in CAIR; however, the SIP submission incorrectly identified SO₂ and NO_x BART emission limits for Cheswick in error.

II. Summary of SIP Revision and EPA Analysis

On March 25, 2014, the Commonwealth of Pennsylvania through PADEP submitted a SIP revision to revise the incorrect PM BART emission limit for Cheswick's Boiler No. 1 and to remove the errant inclusion of the BART SO₂ and NO_x emission limits for Cheswick's Boiler No. 1 from the regional haze SIP because Pennsylvania intended CAIR as SO₂ and NO_x BART

April 30, 2014, EPA reissued its final limited approval of the Pennsylvania SIP to implement the Commonwealth's regional haze program for the first planning period through 2018. 79 FR 24340.

⁵ The BART Guidelines provide a process for making BART determinations that states and local agencies can use in implementing the regional haze BART requirements on a source-by-source basis, as provided in 40 CFR 51.308(e)(1).

for all EGUs including Cheswick. EPA has corrected the PM BART error in a separate rulemaking. *See* 80 FR 2834 (January 21, 2015). On January 21, 2015 (80 FR 2841), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania proposing limited approval and limited disapproval of this SIP revision to correct the SO₂ and NO_x BART for Cheswick. As explained in detail in the NPR, EPA proposed a limited approval to the March 25, 2014 SIP revision to the Cheswick SO₂ and NO_x BART limits included in the Pennsylvania regional haze SIP because the removal of the specific SO₂ and NO_x emission limits corrects an error in the regional haze SIP and strengthens the Pennsylvania SIP overall through replacing the incorrect BART limits with Cheswick's participation in an emissions trading program. EPA proposed a limited disapproval to the portion of the SIP revision addressing SO₂ and NO_x BART for Cheswick because the revision relied on replacing the specific SO₂ and NO_x limits with CAIR which the D.C. Circuit remanded to EPA and which EPA replaced with CSAPR. EPA began implementing CSAPR on January 1, 2015 as the emissions trading program for SO₂ and NO_x for EGUs in certain states including Pennsylvania following the D.C. Circuit's lifting of the stay on CSAPR. *See EME Homer City Generation, L.P. v. EPA*, No. 11-1302 (D.C. Cir. Oct. 23, 2014), Order at 3. *See also* 79 FR 71663 (interim final rule revising CSAPR compliance deadlines).

Although CAA section 110(c)(1) provides that EPA must promulgate a FIP within two years after disapproving a SIP submission in whole or in part, unless EPA approves a SIP revision correcting the deficiencies, EPA believes our limited disapproval of the March 25, 2014 SIP submission does not result in any new FIP obligation for EPA because we already promulgated a FIP on June 7, 2012 to address the identified deficiency (replacing CAIR with CSAPR for SO₂

and NO_x BART for Pennsylvania EGUs). Thus, as explained in the NPR, the June 7, 2012 FIP fully addresses Cheswick's SO₂ and NO_x BART because Cheswick is a Pennsylvania EGU subject to CSAPR. Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of part D of title I of the CAA (CAA sections 171-193) or is required in response to a finding of substantial inadequacy as described in CAA section 110(k)(5) (SIP Call) starts a sanctions clock. Pennsylvania's March 25, 2014 SIP revision submittal for revising Cheswick's BART was not submitted to meet either of these requirements. Therefore, our limited disapproval of Pennsylvania's SIP submission concerning Cheswick's SO₂ and NO_x BART does not trigger mandatory sanctions under CAA section 179. Other specific requirements and the rationale for EPA's proposed action are explained in the NPR and will not be restated here.⁶ No adverse public comments were received on the NPR.

III. Final Action

EPA is finalizing a limited approval of the portion of the Pennsylvania March 25, 2014 revision to its regional haze SIP which removes specific SO₂ and NO_x BART emission limitations for Cheswick set in error and is finalizing a limited disapproval of the SIP revision due to its reliance upon CAIR, which has been replaced with CSAPR. As EPA issued a FIP for SO₂ and NO_x BART emission limitations for EGUs in Pennsylvania, which includes Cheswick, no further action by EPA is required to address the limited disapproval. This conclusion is based on our review of the March 25, 2014 SIP revision as well as Pennsylvania's December 20, 2010 regional haze SIP submission, including technical data and supporting analysis. This final action

⁶ In the NPR, EPA found this SIP revision to Cheswick's BARTs complies with section 110(l) of the CAA and will not interfere with any applicable requirements concerning attainment and reasonable further progress or any other applicable requirement of the CAA, such as the visibility and regional haze provisions of sections 169A and 169B of the CAA.

concludes that Cheswick’s participation in CSAPR supersedes the previous SO₂ and NO_x BART determinations for Cheswick included in Pennsylvania’s regional haze SIP.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: Rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of

non-agency parties. 5 U.S.C. 804(3). Because this is a rule of particular applicability, EPA is not required to submit a rule report regarding this action under section 801.

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days from date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action revising the SO₂ and NO_x BART emission limitations for Cheswick in Pennsylvania's regional haze SIP may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 10, 2015.

William C. Early,
Acting Regional Administrator,
Region III.

Therefore, 40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart NN – Pennsylvania

2. In §52.2020, the table in paragraph (e)(1) is amended by adding a new entry following the existing entries for “Regional Haze Plan” to read as follows:

§52.2020 Identification of plan.

* * * * *

(e)***

(1) ***

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * * * *				
Regional Haze Plan	Statewide	3/25/14	<u>[Insert the date of publication in the Federal Register]</u> <u>[Insert Federal Register citation]</u>	Rulemaking pertains to Boiler No. 1 of the Cheswick Power Plant in Allegheny County. Limited approval removes SO ₂ and NO _x Best Available Retrofit Technology limits. Limited disapproval relates to the Federal Implementation Plan at §52.2042(b) and (c).
* * * * *				

* * * * *

[FR Doc. 2015-06965 Filed: 3/26/2015 08:45 am; Publication Date:

3/27/2015]